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NEBRASKA—INDIAN TREATIES—

AND

THE RIGHTS OF CITIZENS.

From the Missouri Democrat.

THE GOVERNMENT AND THE INDIANS.

INDEPENDENCE, Mo., July 24, 1844.

To the Editor of the Missouri Democrat:

SIR:—As there is no subject in which the people of Missouri have a greater interest than the organization and settlement of Nebraska Territory, so there is nothing which more concerns them than to see proper and expedient measures adopted to secure that desirable end.

The prominent, indeed the solitary obstacle to the immediate settlement of this whole Territory, is the extinguishment of Indian titles to many of the most valuable portions of it, and the removal of the Indians to some remote district, out of harm's and the white man's way. The policy then which we of the border feel most concerned for at present, is that which the Government shall adopt with a view to this object, and we feel interested in seeing such a course pursued, as will certainly secure a speedy and willing relinquishment of the Indian titles, without doing violence to treaty obligations.

The Commissioner of Indian Affairs, in his recent report made upon the heel of a flying visit to the tribes occupying the desired Territory, it must be confessed encourages no very flattering prospect of a speedy removal of these Indians, for although he says that some of them are willing to sell, yet that more, and those occupying the very best lands, refused. It was a great mistake of the commissioner to expect the Indians to make him a proposition to sell their lands. All who are familiar with Indians, know that they never make propositions, but always wait to receive them, and then consider whether they will accept them. Now, from this, and some other views taken by the commissioner, it has come to be thought that Mr. Manypenny, although a sensible and business man, and probably as fit to preside on the Indian bureau at Washington, as any other that could be selected, is yet not altogether so well qualified to judge of Indians themselves, at home, in the wigwam, or around the council fire, as those who have spent their lives among these people. It is not any derogation from Col. Manypenny's official character, to suppose that in judgment of Indian character he may be inferior to others more familiar with that character, and that in consequence he may have fallen into errors in some conclusions based upon his observations among these Indians, and possibly in some theories he may have embraced, as to treaties with them.

It has become a custom for each new administration to profess great zeal for the progress and civilization of the Indians, and to make itself for a season their special benefactor, and various and multiplied are the theories that have been invented and adopted to transform these hunters and warriors into farmers and artizans.

Yet in the face of all this philanthropy, and living in daily sight of and contact with the advancing white man, whom the Government desires him to imitate, the Indian has retrograded and is retrograding in all the higher points of character. And in spite of Government supplies and Government advice,



(the latter always liberally dealt out,) he is descending in position, and rapidly diminishing in numbers.

This is evidence that the misguided philanthropy should have an end, and give way to more practical views. It is demonstrated that the Indians will not imitate the white man. He will live in seeming friendship with him, because he is a conquered enemy; his fears and his necessities compel him to this. His possessions have been taken from him, his spirit has been broken; but his hatred is undying for the race who inflicted his wrongs upon him, and burns all the fiercer because it is silent and suppressed. And the death and extinction from which others would shield him, are to him preferable to an existence to be eeked out by assimilating with the destroyers of his race.

To act towards this remnant of a once proud and now prostrate foe, with magnanimity, is worthy of our Government and people, but it is to misdirect their magnanimity, to urge upon these people, contrary to their wishes, inclinations, tastes, and fixed determinations, certain rules and theories for their adoption, and to mix up in all our necessary intercourse with them, our unwelcome advice, which they have sworn never to follow. Let the Government cease to torture those Indians with their good offices, by forcing upon them a civilization which neither their nature nor prejudice will allow them to receive. Pay them their annuities honestly as they fall due, contribute to their support when necessary, require them to observe peace and good order towards the white settlements, and leave them to enjoy their own habits and customs until time and a rapid and inevitable decay shall remove them from the path of that civilization they will not adopt.

I am addressing, however, from the object of this communication, which is to advocate the speedy removal of the Indians from Nebraska, before the impatience of the white man drives him away, regardless of homes, rights, treaties, or anything else than the law of power and progress. The wave of emigration is now beating upon the eastern border of this Territory, and it will soon gather a weight and impulse that the weak barriers of the intercourse law cannot withstand.

As well for the good of the Indians as for the credit of the Government, is it desirable to see them removed upon fair and liberal terms before the barrier is broken down by the pressure from without! How is this to be effected, and is the Government moving in a proper direction to secure this result? I fear not, although I have no doubt but their intentions are for the best. There are certain courses of policy indicated as well by the Commissioner of Indian Affairs as by the Secretary of the Interior in their recent reports, which, if persisted in, may not result so happily as desired. That policy, in diplomacy, is believed to be best which is most just to all, and when advantages are offered to one party at the expense of another, he who is thus benefited necessarily loses confidence in such a negotiation, and especially does it hold good among savage and barbarous people, that upright and honest dealing around the diplomatic board is surest to win. Now, the Commissioner and Secretary have declared in substance that the Government, in treating with the Indians, will know nothing of any existing obligations, however just or honest, which they may owe, to whomsoever it may be, either within the States or on the border. That they will treat with the Indians alone, buy out their whole estates, in the face of honest creditors, and then remove them beyond the reach of their creditors, and will not, even at the Indian's request, recognize any demand against them, to be paid out of the only estate they have, to wit: their lands, upon the credits of which, or at least their usufruct, honest debts have been contracted.

In other words, the Government declares its determination to protect the Indians, even without their consent, against any and all demands, however just, which they may owe to its own citizens. This will be done at a solemn treaty, where the Indians, in the same speech, if not in the same breath, in which such repudiation is forced upon them, will be advised and instructed to lead *sober, honest and virtuous lives.*

In the first place, is this good policy? Do not the Government officials array against themselves an influence which they cannot overcome or counterbalance by any weight of mere official position? There are, and there have been for many years, among these tribes, numerous white men, acting in the capacity of traders or merchants to those Indians. Their associations with them are intimate, and, as a general thing, they have a large share of the confidence of the Indians. Looking upon them as their superiors in knowledge, and relying on their good will, the Indians have been accustomed to consult them in all difficult matters, and in point of fact, from a long and intimate intercourse with these people, they hold an influence that will not easily be controlled.

Why shall the Government, at the expense of right and justice, take pains to array this influence against themselves? An influence which exerted for them would enable them to make treaties on fair terms, extinguishing the whole Indian title in Nebraska within a few months. Let it not be said that this class of men are factious, if they shall not aid the Government in its desires! They are like all other men, governed in some measure by their interest, and the Government which disclaims the rights of its own citizens for the benefit of others, and declares in advance its determination to disregard their interests, has no right to expect their co-operation in their own ruin.

But it is said that the Government scorns to *buy* influence, and will never traffic in such matters. This is right. But is it to buy influence, to agree to do simple justice to its own citizens, and then to receive the aid and service which their duty requires them to give? These objections are captious, and are made hastily, and without considering the real merits of these men, upon their superfluous and wholesale condemnation as speculators and swindlers. Is not this so? Let us see! Who are these Indian traders? American citizens! The intercourse law requires them to be, and admits none others. Citizens—with a special certificate from the Government of their good standing and character—to wit, their licenses—men of moderate means, frequently very poor, having been ruined in this same trade, for all on this border know how few grow rich in the Indian trade. Men who by the encouragement of the Government, under the general intercourse system, have embarked in this trade, and who from universal experience have found it impossible to conduct it without letting credits to their pennyless and needy customers. What do they sell upon which these credits are based? The invoice filed with the agent, when they ask for license, must show a sufficient stock of good suitable Indian goods, not to be bought without a large outlay of money by the trader.

But why do they let the Indians get in debt? Why do our merchants let their white customers get in debt? Does any body even ask this last question as a reason why debts should not be paid?

The trader is living among the Indians! His Government license does not allow him to run in at the payment and then out again, but requires him to stay with his goods the year round. His goods are on his shelves, the naked Indians need his blankets and the hungry ones his flour and bacon—without them they freeze or starve. The mite that they drew at their last annuity is gone, and many of them never drew enough to buy a blanket. In this condition do they go to their agent? He has no relief for them until the next annuity. To the missionary? He may give them spiritual comfort, and remind them to be resigned to their fate. But they need food and covering for the body, and the spiritual ailment will not suffice. They go to the only one who can or will relieve them—to the trader, and it is useless for him to plead inability to aid them; they point to the goods on his shelves, and their distresses and importunities will not be denied, if he has a spark of humanity in his heart. The trader is forced to sell, and to sell on credit.

The agent and missionary can refuse relief, for they have not the means of relief at hand, and hence are not subjected to the importunities which drive these traders into letting credits, whom the government has encouraged to take goods among the Indians to sell, and then asks why they credit them out to naked and starving people who will not be turned away with a denial.

Suppose it is asked, how it is that, giving these credits for goods actually sold at reasonable prices, the traders keep up? They do not keep up! Where one man lives in this trade, three are ruined, and this well known fact shows the unfairness of classing all those men as knaves and speculators.

The writer of this is no trader, never was, and is in no way connected with any trading establishment; but from residence and long acquaintance on this border, knows that there is not a more abused and wronged set of men to be found than those same traders; and can point to several who were once independent, and who are now bankrupt from this same lucrative trade.

Let us take a general view of this matter. Some of these tribes receive an annuity of from three to ten dollars per head, and (this is a full average) aside from this they produce almost nothing: a few skins from the hunt and an occasional patch of corn makes up their whole production. Yet they do subsist through the year! How? On what? Air? They must eat, they must wear, that, too, which others produce. It is not pretended they can live on the pitance they get from the government. Must they not then draw their support from the charity of others; and in honesty do they not owe for their daily and yearly support, those who supply them? And is it surprising that traders and citizens must give them credit or see them slain? And is not this enough to demonstrate that there may be, must be, just demands against these Indians which ought to be liquidated? Are the whole government disbursements, west of Missouri and Iowa, added to the largest estimate of Indian production, sufficient for their actual necessities? It is clear that it is not! Where then, is this deficiency supplied from, and if it does come from the people of Missouri and Iowa, would it be possible to make a more just or honest debt?

It is these debts then, and such as these, owing to citizens of Missouri and other States, that the government, in their sweeping denunciation of all debts, would require the Indians to repudiate. Is it not apparent that the Indians themselves will waver in their confidence in any government which gives them such advice and drives them to such resorts to wrong its own citizens. The government sometimes takes the ground, and thus excuses its repudiation of Indian debts, that the Indians cannot bind themselves by their contracts, as they are in a state of perpetual pupillage and minority! Yet, even minors have been held, by our law, bound to pay for necessaries. In truth, though, does not such a reason sink into a weak excuse, when the government is itself proposing to make the most solemn of all contracts with these same minors: a treaty for the purchase of their lands, homes, and the graves of their fathers! But then the government protects the Indians and acts fairly with them. So do not the Indians think, let them rely, when they offer them ten cents per acre for lands worth as many dollars. Let the government, in view of its own contracts with these people, past and to come, say no more of their incapacity to contract, and let them as little, in view of their own transactions, cast odium upon their citizen traders. That the Indians have been cheated in former contracts by the government, and some traders, it would be folly to deny, but does it follow that a whole class are to be denounced for the sins of a few?

At a distance, upon the sentimental Athautie, where one peculiarity of their enlightenment is to see the sins of others afar off, and to gloat upon the defamation of the barbarous west, it doubtless sounds well, this sweeping and wholesale defamation of Indian traders and the border people; but the mistake is very great to suppose that there is any capital in it here, where these men are known as amongst the best and worthiest citizens.

Again, it is and must be admitted that there are certain honest debts of these Indians that ought to be paid. But the objection is made that if the door is opened, fraudulent demands will also be presented. Is this objection worthy to be entertained? If so, let us close up our court houses, and burn our law books, because men do sometimes attempt frauds through the very forms of the law. Cannot a commission be appointed capable of examining and adjusting demands, and which can discriminate between an honest debt and a fraudulent demand?

I will venture that men fit for such a commission can be found upon the border of Missouri or Iowa, with sagacity enough to detect fraud, and honesty enough to expose it! Let such a commission be appointed, of capable men, I care not where they are got—let it accompany the commissioner who is to make treaties—let it set in the Indian country upon each treaty ground, where all the proof of Indian debts is supposed to be—let it require all persons presenting debts against Indians to prove them up, as if presented in a court of justice, and let all evidence against them also be heard, and allow those which are just, and condemn those which are not.

This, the writer has been informed, was the course pursued by one of the most successful negotiators of Indian treaties we ever had—Gen. Cass.

Let the government come thus prepared to do simple justice to all; to detect and prevent frauds, but to encourage the Indians to pay their honest dues; to treat fairly with the Indians, and also to act fairly and honestly by their own citizens who have interests among the Indians, showing at least equal consideration to their rights as to those of others—and, sir, the Hon. Commissioner's prediction may be true, that the treaties can be made in a few months of the coming spring, and the whole of Nebraska thrown open to settlement.

JUSTICE TO ALL.

No. 2.

Mr. ERROR: In this communication I propose to offer some reasons why the Government shall not repudiate, or cause the Indians themselves to repudiate, debts owing by the Indians of Nebraska; and to show that unless provision is made in the treaties for the payment of such of these debts as are just, that it will amount to virtual repudiation. I have observed in a former number that in all transactions with foreign powers, our Government has ever kept in view, and recognized as a rule of action, the protection of the *personal private* rights of its own citizens. This was the essence of the announcement of General Jackson when he demanded payment of the French indemnity, and declared to that power that the private rights of American citizens were no longer to be evaded or postponed; and by other Presidents, in transaction with foreign governments, the same policy has been uniformly proclaimed. In the late treaty with Mexico—the treaty of peace—we saw the same protective influence thrown around the private rights of American citizens, in the reservation of the three millions to indemnify against private losses; and any general policy of the Government that would be unmindful of this great cardinal duty, would not go unrebuked for a day. Then, because it has been the policy of this Government, always and under all circumstances, to protect the rights of private citizens, it ought not now, and cannot with any regard for consistency, make a special departure from this policy, to the injury of a particular class of citizens, whose rights have arisen in the prosecution of a lawful calling, directly under the eye and by the encouragement of the Government itself; and to outlaw debts as just as any ever extorted from the tardy justice of France or provided for in the Mexican indemnity, without better reason for such outlawry than the naked fact, that they are owed by Indians. If the Government is disposed to be liberal to the Indians (to which no one will object) let it be at the common expense ~~and~~ out of the public treasury. Let those who are to receive the credit of the benefaction foot the bill; but let not the Government liberality be stained by a violation of private rights at the expense of the public honor.

It has been said and shown in my former number, that just demands against these Indians do and must exist, utterly beyond their power to pay, except out of their lands.

These lands then, the Government now propose to buy, and to buy without paying off these equitable liens of creditors. In addition to this, it proposes,

after buying the lands and investing itself with a title to the same, to remove the debtors themselves beyond the reach of their creditors, and thus to perpetuate the fraud or force by which these debts owing by these people to its own citizens are to be lost. Is it right for a Government invested with power for the purpose of exercising it for the benefit of its citizens, thus to wrest it to their injury and destruction? I suppose not!

Again, I suppose that the question as to whether these lands, that the Government propose to buy, are equitably bound for the debts of the Indians, is one to be determined by a simple process of reasoning. Are the lands the property of the Indians? They must be, or the Government would not be proposing to buy them.

Then, if they are, by every principle of law and right known to us, are they not bound for the debts of their owners? Suppose that the nice, and rather metaphysical, distinction be drawn, that the title is in the Government, but only the right to the usufruct in the occupant, still, this right to the usufruct being unlimited, in time or duration, is equivalent to the fee for all substantial purposes. What is a mere title but a mere shadow, when a perpetual lease intervenes between the tenant and the lord, so that the latter is driven to purchase before he shall enter? Upon the faith, then, of these lands, or what is the same thing, the right to their usufruct, honest debts have been created, and, I ask, has the Government any other right than the mere right of power—to *will and to do*; to take to herself, upon her own terms, these securities, and, like a haughty step-dame, to say to her children, who have been encouraged by her own Indian system to grant these credits, stand aside?

The Government officers in the Indian department, make, frequently, a great parade of the *per capita* law, which requires the Indian annuities shall be paid out by the agents upon a roll of the tribes, each person, or each head of a family, receiving his own share; and, it is said, that if the traders, knowing this law to be in force, and that the Government opposes the system of national debts being made against the Indians, grant credit to the Indians, it is their own wrong, and they have no right to complain if such debts are not paid.

This has all been met fully in my former communication, by showing that neither the *per capita*, nor any other system of payment or expenditure, will enable the Indians to keep body and soul together on the government annuities. That upon any system, their whole annuities, added to their whole production, will not absolutely support them, and that the deficit of supply necessary for their support, must and does come from some other source; and it is ridiculous to be throwing *per capita* or any other theories in the face of men whom the Government regulations require to live among the Indians from year's end to year's end, and to keep among them good supplies of goods, as a rebuke for selling them necessaries, which no one but a savage could refuse to naked and starving people. This general view of matters as they are, is a refutation of all the objections against the payment by the Indians of these debts; but there are some particular views to be taken, which will more fully show the weakness of such objections, and indeed, so far as right and justice to creditors is concerned, the very inherent defects of the *per capita*, which for many purposes is admitted to be a good system.

The *per capita*, then, requires that each annuity, when received, shall be paid over to the Indians on a roll of the tribe, to each person or to each head of a family his pro rata part. And the Government officers have never discounted credits to Indians individually, on the faith of this annuity. Well, Indians sometimes die; nor after getting credits do they always wait until the next annuity is drawn, to get it and pay off before they go. The trader then sells his goods upon the faith of the annuity, and limits his credits to that. A tribe is sometimes decimated in a season. This was the case with the Sacs and Foxes a few years ago, and only last year with the Shawnees; after this the annuity comes, the agent calls together the tribe, and makes out the roll for payment of the living only; among the dead are large numbers of debtors who

have gotten credits specially upon the faith of this annuity, and the accident of their death leaves the creditor without recourse. The money which should have paid his debt is applied on other names, the per capita has given it a new direction, and the loss falls upon the creditor alone. Among people disappearing as rapidly as the Indians are, debts of this kind rapidly accumulate.

Many times the head of a family, expecting to draw for numerous children, dies; he has contracted debts for the benefit of them all of course. Here one death causes a large loss. Nobody will doubt the entire justice of claims made in this way. Yet unless there is some other source than the personal effects of these Indians for the payment of these debts, they must go unpaid. It may here again be assumed that the seller must beware, and that he is only in the condition of another person whose debtor is bankrupt; that even among the whites and by our law, there is no remedy in such cases. Is the Indian a bankrupt in fact? If so, the answer is good. If he has died bankrupt and left nothing, that is the end—his creditor has no right to call on the Government to foot his bill. But if the Indian has left a fund or an interest in an estate of his own, then the Government, nobody else, has a right to take that and appropriate it without first satisfying creditors and paying debts.

Now, as is conceded, that these debtor Indians are ceased, have left their rights and interests in the landed estate of the nation, and because this is held in common, they no less had their undivided individual interest. If they had died out of debt, it would descend by the custom, but if in debt, then their interests were in all equity chargeable with all these debts, and especially with all such as had been made by special sanction of their guardian, the Government, upon the credit of the per capita payment, and afterwards lost by the accident of death before that payment was made, and left unsecured by any other pledge than the debtors' interests in the lands of the tribe.

If the Indians were a distinct and independent people, and our citizens had made debts in commercial intercourse with them, either upon individuals or the nation, it is unquestioned, that acting upon the policy which we always have acted upon, our Government would require provision to be made for the payment of its citizens' just demands.

Such provision would be considered important enough to be the subject of a treaty of itself. Nor would it be inquired by what tenure these people held their lands or other property, whether by individual rights, or as tenants in common. The mode of enforcing and paying the debts might be left to the municipal regulations of the country, but the principle of recognising their right to collect debts would be insisted on.

Then is the reason lessened or weakened for providing for the payment of these debts because the Government has a certain connexion with the judiciary, by which, though in some respects independent, they are in others subordinate to it! Is it a reason that the Government may overlook and discountenance the protection of those rights, because it may from its position more effectually enforce that protection? This *does not follow a fortiori*.

But the Government is charged with the protection of the Indians! Does this duty of protection involve the destruction of its own citizens; or is it so, that in the excess of Government sympathy, Indians or any others can have stronger claims upon the Government than its own citizens?

The broad principle that the Government owes protection to all citizens will not be denied. The Mexican War, involving an expenditure of a hundred millions, was declared, sustained and carried through upon the principle of "*indemnity for the past and security for the future*;" and all know that this indemnity and security had direct reference to the frequent and repeated violations of the rights of American citizens in Mexico.

How long is it since the whole country pledged itself to this same doctrine of the protection of the private rights even of an inchoate citizenship, and stood by Governor Marcy, and endorsed his vindication of these sacred rights even in

the person of an alien born? Are the rights of native citizens less sacred, or is there less eclat in protecting them than foreigners?

One thing is certain, that a neglect of the rights and interests of American citizens is not looked for from a Democratic administration, and if it should turn out, as I trust it will not, it will occasion a good deal of mortification and regret among its true supporters in Missouri, to find the great principle so loudly proclaimed in the Kosciusko affair, in the matter of our own rights, left unapplied; and while we still give our approval to the noble doctrine therein put forth, we may abate something of our admiration for the heroic manner in which it was done, by suspecting the motives which operated to do it.

I have shown that there are just and valid debts against these Indians which they ought to pay. That the basis of these debts were absolute necessities furnished to them.

That a consistent action of the Government upon a principle, which is the very essence of all popular Government, and which has been upon repeated occasions announced as a cardinal part of our public policy, to wit: the protection of the private rights of all its citizens, and a general denial of which no administration could make and live for a day, requires that it should make no exception whatever as to the ~~law~~ ^{law} of the land.

I have given the Government, the advantage of all the plausible objects urged against the payment of these debts, and shown that they are all of the essence of sophistry and mere evasions of argument, and having done thus much I shall, no further than I have done, urge on any ground of simple expediency, the payment of those debts, in the belief that when the right of a citizen is shown to exist, and to be threatened with danger, the duty of the Government to protect that right is plain; and that to do right is always expedient, in the true meaning of the word, because I conclude that the Government will not be guilty both of the wrong and manifest inexpediency of arraying against itself in an enterprise of great moment, to wit, the purchase of Indian titles to Nebraska, an influential class of citizens, by arraying itself against them, a class whom it is true the naked arm of power may temporarily crush, but can never subdue into a servile acquiescence in their own wrongs.

JUSTICE TO ALL